

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOEL D. ROOT and DEPARTMENT OF THE ARMY,
CORPS OF ENGINEERS, Boise, Ida.

*Docket No. 97-2630; Submitted on the Record;
Issued June 18, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's claim for continuation of pay because he failed to provide written notice within the applicable time limitations of the Federal Employees' Compensation Act.

In the present case, the Office accepted that appellant sustained a right wrist strain in the performance of duty on June 25, 1996. In a decision dated September 9, 1996, the Office determined that appellant was not entitled to continuation of pay because he did not provide written notice of traumatic injury within 30 days of the injury. Following a March 26, 1997 hearing, an Office hearing representative affirmed the denial of continuation of pay, and also remanded the case for further development as to the extent of appellant's employment-related injuries.¹

The Board has reviewed the record and finds that the case is not in posture for decision.

Section 8118 of the Act provides for payment of continuation of pay not to exceed 45 days to an employee "who has filed a claim for a period of wage loss due to a traumatic injury with his immediate supervisor on a form approved by the Secretary of Labor within the time specified in section 8122(a)(2) of this title."² Section 8122 provides that written notice of injury

¹ The decision of the hearing representative submitted to the record is undated. The Office refers to the date of the decision as June 9, 1997 on its Form CA-800 (FECA Nonfatal Summary), and the Board will accept June 9, 1997 as the date of the decision. It is also noted that although appellant has raised other issues on appeal, the only adverse decision of record is the denial of continuation of pay.

² 5 U.S.C. § 8118.

shall be given within 30 days as specified in section 8119.³ Section 8119 provides the specific requirements for a notice of injury or death.⁴

In the present case, the date of injury was June 25, 1996. Appellant alleged at the March 26, 1997 hearing that on July 24, 1996 he submitted a recurrence of disability claim to his supervisor.⁵ He then indicated that on July 29, 1996 he was informed by his supervisor that a different form should be completed and on July 30, 1996 he completed and submitted a traumatic injury claim (Form CA-1) to his supervisor.

The hearing representative found that since the Form CA-1 was not filed within 30 days of the June 25, 1996 injury appellant was not entitled to continuation of pay. There remains however, the issue of whether appellant had submitted a written notice on July 24, 1996 that was sufficient to satisfy the requirements of sections 8118, 1822, and 8119. The fact that the form used was not a Form CA-1 does not itself preclude entitlement to continuation of pay.⁶ If appellant did submit a Form CA-2a to his supervisor within 30 days⁷ then a finding must be made as to whether the information provided was sufficient to constitute notice of injury under section 8119.

The case will be remanded to the Office for further development of the evidence to determine if appellant did submit a signed claim form on July 24, 1996 and if so, whether it constituted a timely written notice of a June 25, 1996 injury pursuant to sections 8118, 8122 and 8119 of the Act. After such further development as the Office deems necessary it should issue an appropriate decision.

³ 5 U.S.C. § 8122(a)(2).

⁴ 5 U.S.C. § 8119, which provides in pertinent part: “A notice of injury or death shall; (a) be given within 30 days after the injury or death; (b) be given to the immediate superior of the employee by personal delivery or by depositing it in the mail properly stamped and addressed; (c) be in writing; (d) state the name and address of the employee; (e) state the year, month, day, and hour when and the particular locality where the death occurred; (f) state the cause and nature of the injury, or in the case of death, the employment factors believed to be the cause; and (g) be signed by and contain the address of the individual giving the notice.”

⁵ Appellant had previously filed a claim for traumatic injury on April 4, 1996.

⁶ See *Myra Lenburg*, 36 ECAB 487, 489 (1985) (a specific form is not required); see also *Catherine Gilbert*, Docket No. 95-1129, issued February 14, 1997, where a recurrence of disability claim was treated as a notice of injury, but was filed more than 30 days after the injury and therefore continuation of pay was properly denied).

⁷ The supervisor’s statement confirmed that a Form CA-2a was discussed on July 24, 1996 but does not specifically confirm or deny that a Form CA-2a was submitted to him.

The decision of the Office of Workers' Compensation Programs dated June 9, 1997 is set aside and the case remanded to the Office for further action consistent with this decision of the Board.

Dated, Washington, D.C.
June 18, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member